

**CONTRACT #10**  
**RFS # 343.52-670-06**

**Department of Health**  
**Division of Health Services**  
**Administration**

**VENDOR:**  
**Tennessee Emergency**  
**Medical Services for Children**  
**Foundation (TN-EMSC-F)**



STATE OF TENNESSEE  
**DEPARTMENT OF HEALTH**  
CORDELL HULL BLDG.  
425 5TH AVENUE NORTH  
NASHVILLE TENNESSEE 37247

**PHIL BREDESEN**  
GOVERNOR

**KENNETH S. ROBINSON, M.D.**  
COMMISSIONER

January 24, 2006

**RECEIVED**

**JAN 24 2006**

**FISCAL REVIEW**

Mr. James W. White, Executive Director  
Fiscal Review Committee  
8<sup>th</sup> Floor, Rachel Jackson Bldg.  
Nashville, TN 37243-0057

Dear Mr. White:

In accordance with the procedures outlined in the January 28, 2005, memorandum from Leni S. Chick for the submission of non-competitive contracts, we offer the following brief summary of our request.


The Bioterrorism Hospital Preparedness Program receives 100 percent federal funding from the Health Resources and Services Administration (HRSA). The purpose of the Bioterrorism Hospital Preparedness Program is to prepare hospitals and supporting healthcare systems, in collaboration with other partners, to deliver coordinated and effective care to victims of terrorism and other public health emergencies.

The FFY 2005 Health Resources and Services Administration, Bioterrorism Hospital Preparedness Program Cooperative Agreement Guidance for states now requires that special preparedness efforts for the pediatric population be developed. In the event of a natural or manmade disaster or terrorist attack, approximately 25 percent of the victims could be pediatrics under the age of 18 years old. The treatment for a pediatric patient is very different than the treatment of an adult patient. Also, the medical resources and facilities across the State that are prepared to admit and treat pediatric patients are limited compared to the resources and facilities for adult patients.

The contract that we request to award to the Tennessee Emergency Medical Services for Children Foundation (TN-EMSC-F) is for the purpose of developing a statewide plan for disaster preparedness for pediatrics. The TN-EMSC-F is uniquely qualified to provide the special services for Tennessee. They possess and have access to the very specialized pediatric emergency clinical expertise to perform these required services at the state and interstate level. At the completion of this contract, the medical community will be better prepared to care for the pediatric population of our State in the event of a disaster.

Your consideration of this request will be appreciated.

Sincerely,



Kenneth S. Robinson, M.D.  
Commissioner

KSR:LY

# REQUEST: NON-COMPETITIVE CONTRACT

**RECEIVED**

JAN 24 2006

**FISCAL REVIEW**

APPROVED

Commissioner of Finance & Administration

Date:

Each of the request items below indicates specific information that must be individually detailed or addressed as required. A request can not be considered if information provided is incomplete, non-responsive, or does not clearly address each of the requirements individually as required.

1) RFS #	343.52-670-06	
2) State Agency Name :	Department of Health, Bioterrorism Hospital Preparedness Program	
3) Service Caption :	Develop a statewide plan for disaster readiness for pediatrics.	
4) Proposed Contractor :	Tennessee Emergency Medical Services for Children Foundation (TN-EMSC-F)	
5) Contract Start Date : (attached explanation required if date is < 60 days after F&A receipt)	April 1, 2006	
6) Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised :	August 31, 2007	
7) Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised :	\$325,205	
8) Approval Criteria : (select one)	<input checked="checked" type="checkbox"/> use of Non-Competitive Negotiation is in the best interest of the state <input type="checkbox"/> only one uniquely qualified service provider able to provide the service	
9) Description of Service to be Acquired :		
<p>To develop a statewide plan for terrorism/CBRNE (Chemical, Biological, Radiological, Nuclear and Explosive) readiness for pediatrics to include a survey and evaluation of the level of pediatric disaster readiness of all Tennessee hospitals, complete an evaluation of the level of pediatric activity in all Tennessee hospitals, and conduct site visits to non-pediatric centers with high pediatric activity to identify the needs of facilities to meet the desired level needed to insure pediatric disaster readiness. Based on the survey evaluations and visits to hospitals, determine the need for additional pediatric equipment and training for terrorism preparedness and mass disaster planning, determine the need for additional pediatric equipment on ambulances and training of ambulance personnel, development of a pediatric triage plan for all hospital regions of the State. Complete a pediatric terrorism preparedness revision of the Tennessee Hospital Terrorism Preparedness Plan and six hospital region annex plans, develop a pediatric CBRNE terrorism interactive web-site, develop a toolbox to include protocols for the diagnosis and treatment of the pediatric population to enhance pediatric emergency</p>		

terrorism preparedness, produce 1,000 EMS reference guides and 500 wall charts for emergency rooms with the standard protocols for pediatric resuscitation and initial treatment in the event of a terrorism disaster, provide on-site Pediatric consultants at the eleven regional terrorism preparedness training programs, present two statewide consensus meetings for school system personnel to develop a pediatric terrorism preparedness plan and process of what to do in the event of a terrorism attack at a school to be included in the Tennessee Hospital Terrorism Preparedness Plan and sent to all school systems, and send two representatives to four southeast regional meetings for the purpose of interstate collaboration and planning for a pediatric terrorism attack response.

**10) Explanation of the Need for or Requirement Placed on the Procuring Agency to Acquire the Service :**

In the event of a natural or manmade disaster or terrorist attack, approximately 25 percent of the victims could be pediatrics under the age of 18 years old and the course of treatment for a pediatric patient is very different than the treatment of an adult patient. Also, the medical resources and facilities across the state that are prepared to admit and treat pediatric patients are limited compared to the resources and facilities for adult patients. These special pediatric terrorism preparedness services are a requirement in the FFY 2005 Health Resources and Services Administration, Bioterrorism Hospital Preparedness Program Cooperative Agreement Guidance for states.

**11) Explanation of Whether the Procuring Agency Bought the Service in the Past, & if so, What Procurement Method It Used :**

These special pediatric terrorism preparedness services have not been procured in the past and several of them were only recently required in the FFY 2005 Health Resources and Services Administration, Bioterrorism Hospital Preparedness Program Cooperative Agreement Guidance for states. The TN-EMSC-F is uniquely qualified to provide the special services for Tennessee. The TN-EMSC-F has access to the very specialized pediatric emergency clinical expertise to perform these required services at the state and interstate level.

**12) Name & Address of the Proposed Contractor's Principal Owner(s) :**  
(not required if proposed contractor is a state education institution)

Board of Directors, Michael Carr, M.D., President TN EMSC Foundation,  
5121 Doctor's Office Tower, Nashville, TN 37232-9075

**13) Evidence of the Proposed Contractor's Experience and Length of Experience Providing the Service :**

TN-EMSC Foundation (TN EMSC-F) was recently formed to meet the special pediatric needs of Tennessee to include the emergency care of pediatrics. The purpose of the foundation is to provide funding for the activities and research for Pediatric Emergency Care. A group of pediatric emergency and critical care specialist physicians that are on the TN-EMSC-F Board were involved in the implementation of an Emergency Medical Services for Children system in Tennessee that was funded by HRSA. Members of the TN-EMSC-F Board were among a diverse group of stakeholders, including ones with diversity of expertise and geography throughout the state that created a vision to construct a superb system of care for critically ill and injured children. This group of physicians was active in the landmark passage of the TN EMSC bill. This bill was the first in the nation to require pediatric emergency care education to all physicians and nurses that work in the emergency department and paramedics in the pre-hospital setting. The bill also mandated that a system of care be established and require appropriate size equipment for children. Members of the TN-EMSC-F Board were very active in developing the Emergency Medical Services for Children system and will bring this knowledge

and relationship formed across the State to this contract.

Members of the TN-EMSC-F Board have been involved in the development of the pediatric continuum of care, including school health, disaster preparedness, injury prevention, pre-hospital, hospital, and rehabilitative care. The strength of TN-EMSC-F is in the diversity of the stakeholders and the tremendous amount of service that their Board and affiliated clinical professionals can provide to the state.

Members of the TN-EMSC-F Board were involved in the creation of the TN EMSC-F to serve the Tennessee children in the area of emergency preparedness.

The experience of (TN EMSC-F) lies within its Board and diversity of pediatric stakeholders. The President of the Foundation is the only Pediatric Traumatologist in the State. Other board members represent the Tennessee Chapter of Emergency Physicians and the Tennessee Chapter of the American Academy of Pediatrics. The past chair of the National Committee on Pediatric Emergency Medicine for the American Academy of Pediatrics and member of the committee that authored the *Institute of Medicine's Emergency Medical Services for Children* report which demonstrates the gap in pediatric emergency care as it compares to adults is a board member. The Foundation is the healthcare organization in Tennessee that comprises the professional organizations that impact emergency care for children such as the Tennessee Hospital Association, Tennessee Chapter of the American Academy of Pediatrics, T.C. Thompson's Children's Hospital, Vanderbilt Children's Hospital, LeBonheur Children's Medical Center, East Tennessee Ambulance Children's Hospital and other hospitals that are in the system of emergency care for children. They also possess a direct entry into school systems and the health care of children via their existing relationships with the TN Association of School Nursing and the PTAs for both urban and rural systems. TN EMSC-F is also the principal investigator for the Southeast Regional EMSC Consortium tied to the National EMSC program that has the only terrorism template for pediatrics.

Currently, the EMSC program which includes the TN-EMSC-F is coordinated by the EMSC executive director that is housed within Vanderbilt School of Medicine. Vanderbilt was chosen in 1992 by the stakeholders to support the EMSC program due to its central location in the state. Vanderbilt has continued this function with the Executive Director having collaborative responsibilities to the State EMS director, Foundation President and other pediatric emergency service organizations.

**14) Documentation of Office for Information Resources Endorsement :**  
(required only if the subject service involves information technology)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

**15) Documentation of Department of Personnel Endorsement :**  
(required only if the subject service involves training for state employees)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

**16) Documentation of State Architect Endorsement :**  
(required only if the subject service involves construction or real property related services)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

**17) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives :**

N/A

**18) Justification of Why the State Should Use Non-Competitive Negotiation Rather Than a Competitive Process :**

(Being the "only known" or "best" service provider to perform the service as desired will not be deemed adequate justification.)

The TN-EMSC Foundation is a unique coalition of specialized clinical experts in the field of emergency care for pediatrics across the State. Emergency Medicine is a recognized specialty with sub-specialties in Pediatrics and Pediatric Emergency Medicine with certification by the American Board of Emergency Medicine and the American Board of Pediatrics. Many of the specialized physician experts are from Tennessee's Comprehensive Regional Pediatric Centers who are already familiar with how the centers operate, their capabilities, and the pediatric capabilities of other hospitals in the region, and are familiar with what should be included in a pediatric terrorism disaster plan, having assisted in the current disaster plan that primarily focuses on adults. As a result of the TN-EMSC-F relation to school health nurses, the Foundation will be welcomed into the school systems via their existing relationships thus creating cooperation in devising a pediatric terrorism preparedness plan for school systems. The physicians with TN-EMSC-F also have professional relationships with other health care professionals in adjacent states to Tennessee and the nation. Thus, TN EMSC Foundation is an organization in the state with interdisciplinary collaboration of all stakeholders that can carry out the scope of services of this contract in a timely manner.

**REQUESTING AGENCY HEAD SIGNATURE & DATE :**

(must be signed & dated by the procuring agency head or authorized signatory)



Kenneth S. Robinson, M.D., Commissioner

1/24/06

Agency Head Signature

Date

# CONTRACT SUMMARY SHEET

# DRAFT

010606

RFS #		Contract #	
343.52-670-06			
State Agency		State Agency Division	
DEPARTMENT OF HEALTH		HEALTH SERVICES ADMINISTRATION	
Contractor Name		Contractor ID # (FEIN or SSN)	
Tennessee Emergency Medical Services for Children Foundation		C- or <input checked="" type="checkbox"/> V- 20-2802786-00	
Service Description			
Develop a statewide plan for disaster preparedness for pediatrics.			
Contract BEGIN Date	Contract END Date	Subrecipient or Vendor?	CFDA #
1-Apr-06	31-Aug-07	Vendor	93.889
Mark Each TRUE Statement			
<input checked="" type="checkbox"/> Contractor is on STARS		<input checked="" type="checkbox"/> Contractor's Form W-9 is on file in Accounts	
Allotment Code	Cost Center	Object Code	Fund
343.52	405	139	11
FY	State	Federal	Interdepartmental
2006		\$ 54,200.00	
2007		\$ 216,800.00	
2008		\$ 54,205.00	
TOTAL:	\$ -	\$ 325,205.00	\$ -
COMPLETE FOR AMENDMENTS ONLY		State Agency Fiscal Contact & Telephone #	
FY	Base Contract & Prior Amendments	THIS Amendment ONLY	Crystal Allen (615) 741-9419
			State Agency Budget Officer Approval
TOTAL:	\$ -	\$ -	
End Date			
Contractor Ownership (complete only for base contracts with contract # prefix: FA or GR)			
<input type="checkbox"/> African American	<input type="checkbox"/> Person w/ Disability	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Small Business <input checked="" type="checkbox"/> NOT disadvantaged
<input type="checkbox"/> Asian	<input type="checkbox"/> Female	<input type="checkbox"/> Native American	<input type="checkbox"/> OTHER minority/disadvantaged—
Contractor Selection Method (complete for ALL base contracts— N/A to amendments or delegated authorities)			
<input type="checkbox"/> RFP	<input type="checkbox"/> Competitive Negotiation	<input type="checkbox"/> Alternative Competitive Method	
<input checked="" type="checkbox"/> Non-Competitive Negotiation	<input type="checkbox"/> Negotiation w/ Government (GG or GU)	<input type="checkbox"/> Other	
Procurement Process Summary (complete for Alternative Method, Competitive Negotiation, Non-Competitive Negotiation, OR Other)			

The contractor was identified because they are the the clinical pediatric specialist experts in the State. Not only are they recognized as experts in the State, some of them are recognized nationally. They are the only specialists that are directly affiliated with all four of the State's Comprehensive Regional Pediatric Centers where all physicians and hospitals across the State send their complicated pediatric cases. Or, if a hospital does not have pediatrics, they will refer their pediatric patients to one of the Comprehensive Regional Pediatric Centers. The terms and price were negotiated in best faith that the State of Tennessee will receive quality products and that the end result of the products will benefit the pediatric residents and their families in the State in the event of a chemical, biological, radiological, nuclear or explosion terrorist attack or other public health emergency.



**DRAFT**

**CONTRACT  
BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF HEALTH  
AND  
TENNESSEE EMERGENCY MEDICAL SERVICES FOR CHILDREN FOUNDATION**

This Contract, by and between the State of Tennessee, Department of Health, hereinafter referred to as the "State" and Tennessee Emergency Medical Services for Children Foundation, hereinafter referred to as the "Contractor," is for the provision of developing a statewide plan for disaster preparedness for pediatrics, as further defined in the "SCOPE OF SERVICES."

The Contractor is a nonprofit Corporation. The Contractor's address is:

2200 Children's Way, 5121 Doctor's Office Tower, Nashville, TN 37232-0005

The Contractor's place of incorporation or organization is Tennessee.

**A. SCOPE OF SERVICES:**

- A.1. The Contractor shall evaluate pediatric disaster readiness of all hospitals in Tennessee by September 30, 2006. This will first be accomplished by surveying each licensed hospital in Tennessee with an emergency department. This survey will be focused on issues relating to pediatric readiness for disasters and/or mass casualties. Issues related to bioterrorism and disaster planning will include, but not be limited to, pediatric surge capacity for the emergency department or for inpatient hospital beds, potential pediatric critical care beds, isolation rooms and procedures, pediatric equipment availability, and medical staff resources.
- A.2. The Contractor shall query Universal Billing Code of 1992 (UB 92) data to assess pediatric activity in all hospitals across the state for the purpose of providing an objective measure of current pediatric activity across the state. At a minimum, the data will include pediatric emergency department volumes, pediatric admissions, and pediatric operative procedures.
- A.3. The Contractor shall, from the survey of pediatric disaster readiness of all hospitals and the UB 92 data, conduct twenty-four site visits to non-pediatric centers with high pediatric activity to identify the needs of facilities to provide the care and treatment of pediatric patients in response to a Chemical, Biological, Radiological, Nuclear or Explosion (CBRN&E) terrorist attack. The determination of the appropriate needs of the facilities for the care and treatment of pediatric patients will be based on the most current pediatric text books and current clinical professional medical publications on the care and treatment of pediatric patients that become victims of a CBRN&E terrorist attack.
- A.4. The Contractor shall, from the survey, UB 92 data and the site visits, develop a pediatric triage plan for all Department of Health Hospital Regions of the state, review current statewide equipment requirements for pediatrics in hospitals, and evaluate the need for additional equipment or training based on the National Bioterrorism Hospital Preparedness Program 16 Critical Benchmarks and the six (6) Cross-Cutting Critical Benchmarks as they relate to the care and treatment of pediatric patients during a mass casualty CBRN&E terrorism attack. The Contractor shall collaborate with the Department of Health, Bureau of Health Care Facilities to assess the need for additional pediatric equipment in hospitals across the state and report to the State equipment needs and costs by March 31, 2007.
- A.5. The Contractor shall review the current statewide equipment requirements for pediatrics on ambulances and individual service compliance as indicated by the Bureau of Health Licensure and Regulation, Emergency Medical Services Division and assess the need for additional equipment or training based on current recommendations for mass disaster planning. The Contractor shall collaborate with the Department of Health, Division of Emergency Management

Services (EMS) to assess the need for additional pediatric equipment on ambulances across the state and report to the State equipment needs and costs by March 31, 2007.

- A.6. The Contractor shall use the information gained from the surveys and data (as referenced in A.1. and A.2.) to revise the Tennessee Bioterrorism Hospital Preparedness Plan for the State and the Tennessee Bioterrorism Hospital Preparedness Plans for the six Department of Health Hospital Regions within the State to include pediatrics in the plans by August 31, 2007.
- A.7. The Contractor shall develop an interactive website, by August 31, 2007, which will contain information for pediatric disaster readiness. The website will be constructed and will be the State's resource for pediatric issues related to mass disaster including bioterrorism, trauma, chemical exposures, and radiation. Information on the website will be accessed by links from the Department of Health website, State Emergency Management Services (EMS) website and the Tennessee Emergency Medical Services (TN-EMS) for Children's website.
- A.8. The Contractor will utilize the expertise within the Comprehensive Regional Pediatric Centers to develop content for the website. Content development will include: Chemical, Biological, Radiological, Nuclear and Explosion (CBRN&E) Terrorism Preparedness, Trauma, Chemical Exposure, Radiation, Family Readiness, School Readiness and Children with Special Needs. The website will contain links to other websites such as the American Academy of Pediatrics, American Academy of Child and Adolescent Psychiatry, American Medical Association, American College of Emergency Physicians, Department of Homeland Security, Department of Health and Human Services - Health Resources and Services Administration and the Tennessee Department of Health with further content on pediatric readiness.
- A.9. The Contractor will develop these topics (listed in A.8. above) in an educational toolbox format in a web-based design by January 31, 2007. The toolbox shall include protocols for the diagnosis and treatment of the pediatric population that will enhance pediatric emergency preparedness with specific emphasis on each of these topics and a special focus on pediatric CBRN&E protocols. References and additional useful links shall be included in the toolbox to facilitate attendees with a more in-depth study on pediatric emergency preparedness. For hospitals and/or institutions without internet access, a CD-ROM will be prepared for distribution.
- A.10. The Contractor shall produce 1,000 Emergency Medical Services reference guides that will provide standard protocols for pediatric resuscitation and initial treatment in the event of a disaster. It will incorporate the use of a JumpStart triage system by all first responders and hospital personnel and include antidote dosing for children in the event of a chemical attack. The guides will be laminated for durability. To complement this, 500 wall charts that display condensed information on the initial treatment and resuscitation of pediatric patients, as determined appropriate by pediatric specialists from Comprehensive Regional Pediatric Centers, for the emergency rooms will also be created. The guides and wall charts will be completed by March 31, 2007.
- A.11. The Contractor shall provide an on-site Pediatric Consultant at the regional CBRN&E training sessions that will be held in 11 counties within Tennessee Homeland Security Districts in 2006 and 2007, as determined by the Tennessee Hospital Association and the National Center for Emergency Preparedness.
- A.12. The Contractor shall develop a process of what to do in the event of a CBRN&E terrorism attack at a school by facilitating two consensus panels. The first consensus panel will be a two-day process. The second consensus panel will be a one-day process. The Contractor will produce a CBRN&E Terrorism School Preparedness Plan to be provided to the statewide public school system in Tennessee by August 1, 2007.

- A.13. The Contractor shall send two (2) pediatric specialists from Comprehensive Regional Pediatric Centers to two (2) southeast regional meetings per year for a total of four for the purposes of intrastate collaboration and to develop a multi-state pediatric terrorism preparedness plan.
- A.14. The Contractor shall submit quarterly program evaluation reports to: Kenneth Palmer, Program Director, of the Bioterrorism Hospital Preparedness program. Reports shall include a detailed description of work performed and progress made toward the fulfillment of the contract during that quarter, or impediments encountered.

B. CONTRACT TERM:

- B.1. Contract Term. This Contract shall be effective for the period commencing on April 1, 2006 and ending on August 31, 2007. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Three Hundred Twenty Five Thousand Two Hundred Five Dollars (\$325,205). The Service Rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The Service Rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the Service Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Compensation Firm. The Service Rates and the Maximum Liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.
- C.3. Payment Methodology. The Contractor shall be compensated based on the Service Rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor's compensation shall be contingent upon the satisfactory completion of units of service or project milestones defined in Section A. The Contractor shall be compensated based upon the following Service Rates:

<u>SERVICE UNIT/MILESTONE</u>	<u>AMOUNT</u>
April 1, 2006 – June 30, 2006	\$54,200
July 1, 2006 – September 30, 2006	\$54,200
October 1, 2006 – December 31, 2006	\$54,200
January 1, 2007 – March 31, 2007	\$54,200
April 1, 2007 – June 30, 2007	\$54,200

July 1, 2007 – August 31, 2007

\$54,205

**Total**

**\$325,205**

The Contractor shall submit quarterly invoices, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for completed units of service or project milestones for the amount stipulated.

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.6. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this contract, not to constitute proper remuneration for compensable services.
- C.7. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.8. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.
- D. STANDARD TERMS AND CONDITIONS:
- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not

be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.

- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest" and "Nondiscrimination" (sections D.6. and D.7.). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Records. The Contractor shall maintain documentation for all charges against the State under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.9. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.10. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.11. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.12. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public

liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

- D.13. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.14. Force Majeure. The obligations of the parties to this contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.
- D.15. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.16. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under **Tennessee Code Annotated**, Sections 9-8-101 through 9-8-407.
- D.17. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.18. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.19. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

The State:

Kenneth Palmer, Program Director  
Bioterrorism Hospital Preparedness Program  
Department of Health, Health Service Medical  
Cordell Hull Bldg., 425 5<sup>th</sup> Ave N, 5<sup>th</sup> Floor, Nashville, TN 37247  
Telephone Number: (615) 741-1915  
Fax Number: (615) 741-1063

The Contractor:

Michael G. Carr, M.D., President  
Tennessee Emergency Medical Services for Children Foundation

5121 Doctor's Office Tower  
2200 Children's Way  
Nashville, TN 37232-9075  
Telephone Number: (423) 778-7695  
Fax Number: (423) 757-0775

Project Coordinator:  
Rhonda Phillippi  
Tennessee Emergency Medical Services for Children Foundation  
5121 Doctor's Office Tower  
2200 Children's Way  
Nashville, TN 37232-9075  
Telephone Number: (615) 343-3672  
Fax Number: (615) 936-3467

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. Partial Takeover. The State may, at its convenience and without cause, exercise a partial takeover of any service which the Contractor is obligated to perform under this Contract, including but not limited to any service which is the subject of a subcontract between Contractor and a third party, although the Contractor is not in Breach (hereinafter referred to as "Partial Takeover"). Said Partial Takeover shall not be deemed a Breach of Contract by the State. Contractor shall be given at least 30 days prior written notice of said Partial Takeover with said notice to specify the area(s) of service the State will assume and the date of said assumption. Any Partial Takeover by the State shall not alter in any way Contractor's other obligations under this Contract. The State may withhold from amounts due the Contractor the amount the Contractor would have been paid to deliver the service as determined by the State. The amounts shall be withheld effective as of the date the State assumes the service. Upon Partial Takeover, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.5. State Ownership of Work Products. The State shall have all ownership right, title, and interest, including ownership of copyright, in all work products created, designed, developed, derived, documented, installed, or delivered to the State under this Contract. The State shall have royalty-free and unlimited rights to use, disclose, reproduce, or publish, for any purpose whatsoever, all said work products. The Contractor shall furnish such information and data upon request of the State, in accordance with the Contract and applicable State law.

- E.6. Competitive Procurements. This Contract provides for reimbursement of the cost of goods, materials, supplies, equipment, or services. Such procurements shall be made on a competitive basis, where practical.
- E.7. State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the State for the Contractor's temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the State in good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the residual value of the property at the time of loss.
- E.8. Workpapers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis workpapers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.
- E.9. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:

No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, and entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, subcontracts, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.

- E.10. Public Funding Notice. All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the Contractor relative to this Contract shall include the statement, "This project is funded under an agreement with the State of Tennessee." Any such notices by the Contractor shall be approved by the State.
- E.11. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed.
- E.12. Confidentiality of Records. Strict standards of confidentiality of records shall be maintained in accordance with the law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of State law and ethical standards and shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with State law and ethical standards.

The Contractor will be deemed to have satisfied its obligations under this section by exercising the



same level of care to preserve the confidentiality of the State's information as the Contractor exercises to protect its own confidential information so long as such standard of care does not violate the applicable provisions of the first paragraph of this section.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

E.13. Copyrights and Patents. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State for infringement of any laws regarding patents or copyrights which may arise from the Contractor's performance of this Contract. In any such action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any final judgment for infringement. The Contractor further agrees it shall be liable for the reasonable fees of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State. The State shall give the Contractor written notice of any such claim or suit and full right and opportunity to conduct the Contractor's own defense thereof.

E.14. Public Accountability. If this Contract involves the provision of services to citizens by the Contractor on behalf of the State, the Contractor agrees to establish a system through which recipients of services may present grievances about the operation of the service program, and the Contractor agrees to display a sign stating:

"NOTICE: This Contractor is a recipient of taxpayer funding. If you observe an employee engaging in any activity which you consider to be illegal or improper, please call the State Comptroller's toll free hotline: 1-800-232-5454"

Said sign shall be displayed in a prominent place, located near the passageway(s) through which the public passes to receive State funded services.

E.15. Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995," the Contractor shall prohibit smoking of tobacco products within any indoor premises in which services are provided pursuant to this Contract to individuals under the age of eighteen (18) years. The Contractor shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Contract.

E.16. Date/Time Hold Harmless. As required by *Tennessee Code Annotated*, Section 12-4-118, the contractor shall hold harmless and indemnify the State of Tennessee; its officers and employees; and any agency or political subdivision of the State for any breach of contract caused directly or indirectly by the failure of computer software or any device containing a computer processor to accurately or properly recognize, calculate, display, sort or otherwise process dates or times.

E.17. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or

other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by **Tennessee Code Annotated**, Section 8-6-106.

E.18. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in **Tennessee Code Annotated**, Section 8-36-801, et. seq., the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to **Tennessee Code Annotated**, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.

E.19. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it and its principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State department or agency;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining attempting to obtain, or performing a public (Federal, State, or Local) transaction or grant under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or Local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (Federal, State, or Local) terminated for cause or default.

E.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.

- a. Contractor warrants to the State that it is familiar with the requirements of HIPAA and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this contract.
- b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA

and its regulations, in the course of performance of the Contract so that both parties will be in compliance with HIPAA.

- c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by HIPAA and that are reasonably necessary to keep the State and Contractor in compliance with HIPAA. This provision shall not apply if information received by the State under this Contract is NOT "protected health information" as defined by HIPAA, or if HIPAA permits the State to receive such information without entering into a business associate agreement or signing another such document.

IN WITNESS WHEREOF:

TENNESSEE EMERGENCY MEDICAL SERVICES FOR CHILDREN FOUNDATION:

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Michael G. Carr, M.D., President

Date

DEPARTMENT OF HEALTH:

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Kenneth S. Robinson, M.D., Commissioner

Date

APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:

---

M. D. Goetz, Jr., Commissioner

Date

COMPTROLLER OF THE TREASURY:

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John G. Morgan, Comptroller of the Treasury

Date